

Residential Tenancies Tribunal

Applications: 2022 No. 0826 NL

Decision 22-0826-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 17 October 2022 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing. She requested that her personal name be used on any orders issued related to this file.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served personally of the claim against him on 04 October 2022.
5. The details of the claim were presented as a month-to-month rental agreement that started in January 2022. Monthly rent is set at \$700.00 and a security deposit in the amount of \$372.00 was collected.
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings, the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking vacant possession of the rental premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case is sections 10 and 22 of the *Act* as well as policy 07-002 Failure to Complete Repairs.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. The landlord informed that he is currently incarcerated. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

Issue 1: Vacant Possession

Relevant Submissions

13. The rental premises is located at [REDACTED] and the tenant occupies unit █ which is located on the second floor. The landlord testified that she has owned the building since the 1960s and that there have been multiple renovations and upgrades to the premises, including the installation of new commercial grade carpets about 5 or 6 years ago.
14. The landlord testified that she agreed to rent to the tenant on a trial basis and that early on in his tenancy, she conducted periodic inspections of the premises with the tenant's worker and the tenant. The landlord testified that these inspections did not continue past the first six weeks and that the unit had been "really clean" prior to the tenant's occupancy. The landlord testified that she later became aware that the tenant's worker had personally cleaned the tenant's unit prior to these inspections occurring.
15. The landlord testified that she issued the tenant a section 24 termination notice (Interference with peaceful enjoyment) in March 2022 and that this notice was issued in response to complaints received from neighbours. The landlord specifically mentioned that the police were frequently at the rental premises and

that neighbours reported the tenant did not remove any garbage from his rental premises.

16. The landlord testified that she came to issue a written request for repairs to the tenant on 27 July 2022 (L#2) after regularly attending to the rental premises to see if the tenant had vacated the rental premises. The landlord testified that she had verbally requested earlier in July that the same repairs be completed, but they were not. The landlord referred to the photos submitted (L#2) and testified that she issued this request because:
 - She had noticed a hole in the wall of the stairwell.
 - She had noticed holes in carpet in the stairwell.
 - She had heard reports of the tenant accessing his rental unit by climbing on the building eaves and entering through the second floor window.
 - She had heard reports from neighbours that he did not remove garbage from the rental premises, and that one of the two bedrooms was used as a garbage room.
17. The notice dated 27 July 2022 (L#2), required that the following repairs be completed by 01 August 2022:
 1. Repair holes in wall
 2. Repair burns in carpet
 3. Shampoo all carpets
 4. Fix damages to eaves made by climbing on same
 5. Remove all garbage, clean walls and surfaces
18. The landlord testified that she returned to the rental premises multiple times (between 27 July and 01 August) in an effort to confirm whether or not the required repairs had been completed. The landlord testified that she was able to confirm that # 4, the exterior repair was not completed. However, she was not able to confirm whether or not the interior repairs (e.g., #1, #2, #3, and #5) were completed because she did not have access the rental premises.
19. The landlord issued a termination notice on 04 August 2022, under section 22 of the *Act* that identified a move out date of 11 August 2022 (L#4). The landlord testified that the notice was served by being taped to the door of the tenant's rental unit.
20. The landlord testified that she accessed the rental unit on 11 August 2022 (independently with her own key) because it appeared as though the unit had been vacated. The landlord stated that she visually confirmed interior repairs were not completed and that things were "worse than she thought". The landlord then returned later in the day to photograph the observed damage, but encountered the tenant and a female friend and a verbal altercation ensued causing the landlord to leave.
21. The landlord provided the tenant with notice of inspection on 03 October 2022 and attended the rental premises to photograph the interior and serve the tenant with notice of her dispute. The landlord testified that she was accompanied by her handyman, [REDACTED] while she photographed the premises (e.g., all interior

photos in L#3). An attempt was made to have [REDACTED] attend the hearing as a witness, but he was not able to join.

22. The landlord testified that she became aware on 09 October 2022 that the tenant had been incarcerated. She then had her handyman change the locks on 12 October 2022 to prevent others from accessing the unit. She testified that her other tenants were reporting that the rental premises was still being accessed by associates of the tenant.

Analysis

The landlord is seeking vacant possession of the rental premises after issuing the tenant with a termination notice under section 22 of the Act, **Notice where tenant's obligation not met** which reads in part:

- 22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*
- (2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*
- (3) In addition to the requirements under section 34, a notice under this section shall*

 - (a) be signed by the landlord;*
 - (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
 - (c) be served in accordance with section 35.*
23. Pursuant to **Policy 07-002 Failure to Complete Repairs**, the landlord may give the tenant written notice to clean or repair the damage when a tenant fails to keep the premises clean or repair damages. If the tenant fails to comply within 3 days or a reasonable period, the landlord may give the tenant a termination notice of not less than five days.
24. Specific to this dispute, the landlord testified that she issued the termination notice on 04 August 2022 despite not accessing the rental premises prior to 01 August 2022 (e.g., the stated date identified in the written request for repairs) to confirm whether or not ALL requested repairs had been completed by the tenant. The landlord did however access the unit on 11 August 2022, as well as 04

October 2022 and provided comprehensive photos of the interior of the unit on this later date. These photos depict significant debris and disarray throughout the unit, multiple sizable holes to various walls and significant damage to the carpets throughout the unit.

25. Based on a review of these photos and the landlord's testimony, I find that she established on the balance of probabilities that her issuance of the 04 August 2022 was justified because:
 - She visually confirmed that the damaged eaves were not repaired prior to 01 August 2022.
 - The scope of debris and damage visible in the photos captured 04 October 2022 matched the landlord's testimony regarding the state of the rental premises on 11 August 2022.
 - Because this damage and debris existed on 11 August 2022, I find it highly likely that this same damage and debris existed on 01 August 2022.
26. I therefore find that the termination notice issued to the tenants on 04 August 2022 termination notice issued under section 22 of the Act to be a valid notice as it meets all the requirements therein.

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Summary of Decision

29. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

19 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal